

ENTERED

January 11, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOHN D AHERN

Plaintiff

VS.

UNITED STATES OF AMERICA

§
§
§
§
§
§

CIVIL ACTION NO. 2:14-CV-259

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

Pending before the Court is the Government's Motion to Dismiss Complaint, or in the Alternative, Motion for Summary Judgment (D.E. 27), to which Plaintiff has filed a response in opposition (D.E. 28). On July 15, 2015, United States Magistrate Judge Jason B. Libby issued a Memorandum and Recommendation ("M&R") (D.E. 29), recommending that the Government's motion to dismiss be denied. The Government filed its objection (D.E. 30) and Plaintiff filed his response (D.E. 31) to the objection.

Plaintiff is a former federal prisoner and filed this civil rights action pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2674 *et seq.* D.E. 1 and D.E. 16. Plaintiff is seeking damages against the United States based on the conduct of the United States Marshals Service (USMS) in failing to provide him adequate medical attention while he was confined at the Coastal Bend Detention Center (CBDC). D.E. 1.

The Government objects to the M&R on the basis that the Magistrate Judge failed to consider its assertion that this Court lacks subject matter jurisdiction. D.E. 30, p. 3. Plaintiff's claim allegedly arises under the FTCA so jurisdiction is premised on 28 U.S.C. § 1331. The Government argues that the FTCA is not applicable because of the

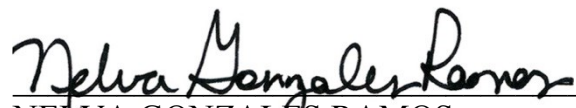
1 / 2

independent contractor exception. It claims that Plaintiff seeks to hold the USMS liable for the actions of the CBDC, an independent contractor.

The M&R sets forth facts which indicate that the USMS did not release the day-to-day operations of the facility to the CBDC, at least with respect to the medical treatment. The M&R correctly states that at this stage of the proceedings, Plaintiff's claims are sufficient to establish jurisdiction. Thus, the Government's objection is **OVERRULED**.

Having reviewed the findings of fact, conclusions of law, and recommendations set forth in the Magistrate Judge's Memorandum and Recommendation, as well as the Government's objection, and all other relevant documents in the record, and having made a de novo disposition of the portion of the Magistrate Judge's Memorandum and Recommendation to which the objection was specifically directed, the Court **OVERRULES** the Government's objection and **ADOPTS** as its own the findings and conclusions of the Magistrate Judge (D.E. 29). Accordingly, the Government's Motion to Dismiss Complaint, or in the Alternative, Motion for Summary Judgment (D.E. 27) is **DENIED**.

ORDERED this 11th day of January, 2016.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE